

June 9, 2016

Patricia L. Davis
Paralegal
303.223.1344 tel
303.223.1111 fax
pdavis@bhfs.com

SENT VIA foiaonline.regulations.gov

Regional Freedom of Information Officer
U. S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

RE: Freedom of Information Act request for records relating to Letter of Potential Violation of the Clean Water Act, Ref. No. 8ENF-W, to C-2 Construction, Inc. and Iron Man Enterprises, LLC for property located in Killdeer, Dunn County, North Dakota

Dear FOIA Official:

This firm represents C-2 Construction, Inc. and Iron Man Enterprises, LLC (collectively, the "Companies"), concerning property located in Section 4, Township 145 North, Range 95 West, Killdeer, Dunn County, North Dakota which is the location of the Killdeer Industrial Park (the "Site"). Pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552(a)(3), we request that you provide us with copies of responsive documents pertaining to the following subjects:

1. Any and all documents (photos, imagery, maps, drawings, permits, letters, emails, memoranda or faxes) regarding the above-referenced site, including but not limited to communications (letter, emails, memoranda or faxes) between the U. S. Environmental Protection Agency ("EPA"), U. S. Army Corps of Engineers ("ACOE"), the Companies, and/or with any third parties regarding the Site.
2. Any and all documents (photos, imagery, maps, drawings, permits, letters, emails, memoranda or faxes) pertaining to the EPA's letter of potential violation of the Clean Water Act, Ref. No. 8ENF-W, dated May 6, 2016 to the Companies (which is attached), and any additional documentation and information providing background and/or the basis for that letter.

The timeline for this requested search is from January 1, 2012 to present.

We request that you provide copies of the requested documents as soon as possible, but no more than the statutory twenty (20) working days, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). Please contact me at the phone number or email address provided above when the records are available

410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
main 303.223.1100

Regional Freedom of Information Officer

June 9, 2016

Page 2

and I will make the necessary arrangements for them to be picked up or provided electronically and for your agency to be reimbursed for its reasonable costs. If you believe the costs will exceed \$300, please let me know prior to completing this request. Also, please notify me by email or phone if the statutory time period must be extended due to unusual circumstances, pursuant to 5 U.S.C. § 552(a)(6)(B)(i), and please provide the grounds for such an extension.

We are submitting this request contemporaneously with an identical request to the U. S. Army Corps of Engineers' Omaha District Office.

Please contact me by email or phone if you have any questions pertaining to this request. Thank you for your consideration and assistance.

Sincerely,



Patricia L. Davis

Attachment

cc: Abigail Dean, Esq. (via email)
Kenneth Champagne, Esq. (via email)
Patricia L. McQueary (via email)

019045\0001\14786505.1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: 8ENF-W

MAY 06 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7009 3410 0000 2596 5340
7009 3410 0000 2596 5364

C-2 Construction, Inc.
John M. Cristobal
805 S. 18th W., Suite 100
Mountain Home, Idaho 83647

Iron Man Enterprises, LLC
Jeff McKinlay
4168 E. 600 N.
Rigby, Idaho 83442

Re: Letter of Potential Violation of the Clean Water Act

Dear Messrs. Cristobal and McKinlay:

This letter concerns the apparent discharge of dredged or fill material into an unnamed tributary of Gumbo Creek and its adjacent wetlands on property owned, controlled, or operated by you in Section 4, Township 145 North, Range 95 West, Killdeer, Dunn County, North Dakota (the Site). The Site is the location of the Killdeer Industrial Park. Based on our review of all information currently in our possession, the United States Environmental Protection Agency believes that you may be in violation of the Clean Water Act (CWA), as amended. The CWA requires that authorizing permits be obtained from the United States Army Corps of Engineers (Corps) prior to the discharge of dredged or fill material and other pollutants, respectively, into waters of the United States. See 33 U.S.C. §§ 1311, 1342 and 1344. As defined in 40 C.F.R. § 122.2 and 33 C.F.R. § 328.3, waters of the United States include certain surface waters and wetlands.

On June 18, 2015, the Corps inspected the Site and observed that approximately 1,000 linear feet of the unnamed tributary was channelized, relocated, and filled with dredged or fill material and 1 acre of wetlands and a pond were filled with dredged or fill material. These activities were apparently performed without authorization by a permit issued by the Corps and impacted what is believed to be waters of the United States. If this is the case, you are in violation of section 301 of the CWA, 33 U.S.C. § 1311.

The EPA is in the process of making a final determination as to whether you are in violation of the CWA. The EPA would like to consider any information that you believe demonstrates that the description above is incorrect or that the activities described above do not constitute a violation of the CWA. If you would like to submit any information to be considered by the EPA prior to the EPA making a final determination, please provide such information within 21 calendar days of receipt of this

letter to Kenneth Champagne, Section 404 Enforcement Officer, at the address shown above. Please note that the voluntary submission of this information does not preclude the EPA's use of its authority to issue a request for information pursuant to section 308 of the CWA, 33 U.S.C. § 1318.

The EPA invites you to discuss this matter prior to its making a final determination. If it is determined that you are not responsible for any violation, no further action will be required. If the EPA does make a final determination that you are liable for a CWA violation, section 309 of the CWA, 33 U.S.C. § 1319, grants the EPA the authority to refer the matter to the United States Department of Justice. Alternatively, the EPA, using its authority under section 309(a) of the CWA, 33 U.S.C. § 1319(a), may issue a unilateral compliance order to you which you may contest through a formal judicial adjudicative process, or, if you agree, the EPA may enter into an administrative order on consent (AOC) with you. Both the unilateral compliance order and the AOC would require that you take steps to come into compliance with the CWA. If you are interested in negotiating the terms of an AOC with the EPA, please inform either of the EPA contacts listed below of that interest within 21 calendar days of receipt of this letter. All AOCs must include provisions waiving the right to administrative or judicial review of the AOC under the Administrative Procedure Act (APA) and acknowledge the EPA's authority to issue the AOC. However, you need not admit CWA liability in the AOC.

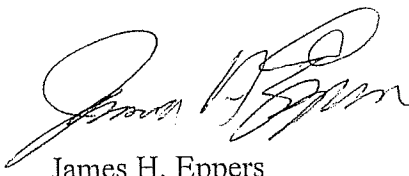
Under section 309(g) of the CWA, 33 U.S.C. § 1319(g), the EPA may also assess an administrative penalty against you if it makes a final determination that you have violated the CWA. Prior to proposing such an assessment, which you would have the right to contest through an administrative adjudicative process, the EPA would be open to discussing the terms of a mutually acceptable penalty settlement, the terms of which would be incorporated into a combined complaint and consent agreement (CCCA) which would be signed by both you and the EPA. In a CCCA, you must waive any right to contest the allegations and to appeal the agreement. As with the AOC, you need not admit CWA liability in a CCCA.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, U.S. EPA Small Business Resources, containing information on compliance assistance resources and tools available to small businesses, is enclosed with this letter. Please note that the EPA has not made a determination that a small business is involved in this matter, and SBREFA does not eliminate the responsibility to comply with the CWA.

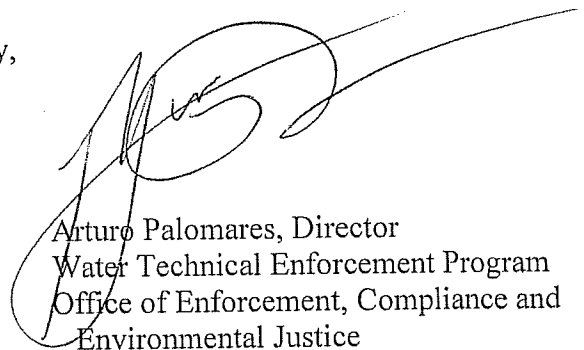
If you have any questions regarding this Letter of Potential Violation, the most knowledgeable people on our staffs are Abigail Dean, Attorney, at 303-312-6106, and Kenneth Champagne, Section 404 Enforcement Officer, at 303-312-6608.

We appreciate your prompt attention to this matter.

Sincerely,



James H. Eppers
Supervisory Attorney
Regulatory Enforcement Unit
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice



Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: Patricia L. McQueary, U.S. Army Corps of Engineers